

12840  
28-91

FCC MAIL SECTION

**WILLIAM J. SMITH**  
Attorney At Law

ALL CORRESPONDENCE TO: POST OFFICE BOX 6655 - SANTA ROSA, CALIFORNIA 95406  
OFFICES LOCATED AT: 6400 REDWOOD DRIVE, ROHNERT PARK, CALIF. 94783  
TELEPHONE (707) 584-7550 TELEFAX (707) 586-9569

JUL 2 6 58 AM '91

ORIGINAL

RECEIVED

June 27, 1991

Federal Communications Commission  
Office of The Secretary, FM Branch  
1919 M Street  
Washington, D.C. 20554

JUL 2 10 42 AM '91  
AUG 1 1991  
FEDERAL COMMUNICATIONS COMMISSION

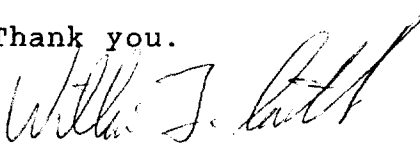
Re: Reply to Dragonfly's Opposition  
to Petition to Deny

To Whom It May Concern:

Enclosed for filing are the original and two (2) copies of Reply  
to Dragonfly's Opposition to Petition to Deny.

Please return a file-stamped copy to me in the enclosed self  
addressed stamped envelope.

Thank you.

  
WILLIAM J. SMITH

WJS/ek

RECEIVED  
JUL 2 1991  
FM EXAMINER

FCC MAIL SECTION

JUL 2 6 58 AM '81

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C.

In Re Application of

DRAGONFLY COMMUNICATIONS, INC.

File No. 910211MA

Application For FM  
Construction Permit for New  
FM Channel 240A, 95.9 mHz  
Healdsburg, California

To: Secretary,  
FM Branch

REPLY TO DRAGONFLY'S OPPOSITION TO  
PETITION TO DENY

1. The Opposition to Petition to Deny filed by Dragonfly Communications, Inc. ("Dragonfly") states (p. 2) that Petitioner has made a "bald mis-statement of California law", citing Elysian Heights Residents Association Inc. v. City of Los Angeles (1986) 182 Cal. App. 3d 21. However, it is Dragonfly, not Petitioner, who has made a "bald mis-statement of California law", for the reason that Elysian Heights is not the case in point. Elysian Heights holds that building permits need not be scrutinized for general plan consistency, so long as they are consistent with the zoning ordinance.

1           2.    What Dragonfly ignores is that communications towers  
2 requires a use permit to be issued pursuant to the standards set  
3 forth in the Petition to Deny, and use permits are required to be  
4 consistent with the general plan under Neighborhood Action Group  
5 v. County of Calaveras (1984) 156 Cal. App. 3d 1176. The primacy  
6 of the general plan under California law sometimes comes as  
7 something of a shock to counsel from other jurisdictions, so  
8 Dragonfly's misunderstanding is not uncommon. It is regrettable  
9 that Dragonfly should have accused Petitioner of a "bald mis-  
10 statement", because, as shown, such language redounds.

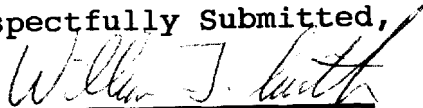
11           3.    Dragonfly also attempts to distinguish its 400 foot high  
12 tower from a similar tower proposed by KHTT, which was denied last  
13 year by the County of Sonoma, by saying that the KHTT proposal  
14 would have been on top of the ridge, whereas Dragonfly's is sited  
15 lower than the adjoining hillside. Dragonfly apparently urges the  
16 Commission to conclude that this will make a dispositive difference  
17 to the County of Sonoma. The problem is that Dragonfly has not  
18 shown that Dragonfly will be able to comply with all of the  
19 criteria required for such towers. That is, a similar tower  
20 proposal was recently turned down on land bearing the same zoning  
21 and same general plan land use designations as Dragonfly's, but  
22 Dragonfly has not shown how its tower would comply with local law.  
23  
24

CONCLUSION

4. The Petition to Deny should be granted because Dragonfly's chances of obtaining local approval has been demonstrated to be improbable.

Respectfully Submitted,

Dated: June 27, 1991

  
WILLIAM J. SMITH  
Attorney at Law  
In Propria Persona  
P.O. Box 6655  
Santa Rosa, CA. 95406

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24

PROOF OF SERVICE

I am a citizen of the United States and a resident of the County of Sonoma, California. I am over the age of 18 years and am not a party to the within action. On June 27, 1991, I served the attached REPLY TO DRAGONFLY'S OPPOSITION TO PETITION TO DENY by placing a true copy thereof enclosed in a sealed envelope with postage thereon fully prepaid, in the United States Postal Service Office, Santa Rosa Main Branch, Santa Rosa, California, addressed as follows:

Mario Edgar Deas  
126 Mill Street  
Healdsburg, CA. 95448

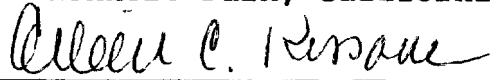
George L. Lyon, Jr., Esq.  
Lukas, McGowan, Nace & Guttierrez  
1819 H Street N.W.  
Suite 700  
Washington, D.C. 20006  
Attorneys for Linda D. Beckwith

Michael Couzens, Esq.  
385 8th Street, 2nd Floor  
San Francisco, CA. 94103  
Attorney for Dragonfly  
Communications, Inc.

Lee W. Shubert, Esq.  
Haley, Bader & Potts  
Suite 600  
2000 M Street, N.W.  
Washington, D.C. 20036-3374  
Attorneys for Deas  
Communications, Inc.

I, EILEEN C. KISSANE certify under penalty of perjury that the foregoing is true and correct.

Executed on June 27, 1991, at Rohnert Park, California.

  
EILEEN C. KISSANE